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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/663,501	09/15/2000	Makoto Korehisa	450100-02714	2807

20999 7590 10/17/2006

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EXAMINER	
HUYNH, SON P	

ART UNIT	PAPER NUMBER
2623	

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/663,501	Applicant(s) KOREHISA ET AL.	
	Examiner Son P. Huynh	Art Unit 2623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *2 and 12-19*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues the recitation of the subject matter relating to a random number generator is merely subject matter disclosed in the original Specification (page 6, paragraph 2). In response, the Examiner agrees. However, this subject matter is recited from the original Specification on page 9 and Figures 1 and 5. As indicated in the Final Office Action, the Applicant has elected species 2: Figure 3 (see Response to Restriction Requirement, page 2- filed on September 10, 2004). According to MPEP, Applicant cannot shift to claiming another invention after an election is once made and action given on the elected subject matter (see MPEP 819 [R-3]). Therefore, Applicant's argument regarding Specification on page 9, Figures 1 and 5, described on pages 7-10 which illustrate another Inventions are improper. Furthermore, the Specification on page 9 describes access controller 202 monitor the random time of the random number generator 207 and the time information of the timer 201 and issues a command to the data server access section 203 when the time information match so that a data transfer request for downloading broadcast program information is made to the data server 100 (page 9, paragraph 2). Thus, this section merely describes monitoring random time and the time information of the timer (which merely interpreted as a clock), and download the broadcast program information if the time is matched. In addition, the abstract merely says in line 11 "a random timing generated based on a preset time" as noticed by the Applicant. Neither Figure 3 and Specification section describes Figure 3 nor the Specification supports the limitation "wherein the random time is used to modify the determined time" wherein the "...determined time, set by said table," as claimed in claim 2. Therefore, rejection under 35 U.S.C 112, first paragraph is properly applied and maintained.

Applicant further argues " assigning priority of movies and music to the distribution system between the hours of 8:00 PM and 10:00 PM is completely different than a random number generator for generating a random time, wherein the random time is used to modify the determined time"; and then the Applicant concludes therefore, the combination of Knudson, Yuen, and Gordon fail to teach or suggest "a random number generator for generating a random time, wherein the random time is used to modify the determined time" (page 9, paragraphs 4-5).

In response, this argument is respectfully traversed. As indicated in the Final Office Action mailed on 7/21/2006, Knudson discloses the program listings information is received by the program guide on user television equipment on demand, periodically, continuously, or any other suitable technique (col. 11, lines 7-22). Thus, the device that generates "on demand" request for program listings information is interpreted as "a random number generator for generating a random time". However, Knudson does not specifically disclose "the random time is used to modify the determined time".

Gordon discloses downloading and displaying program information at a determined time (e.g. displaying movies and music over news between the hours of 8:00 PM and 10:00 PM). However, the occurrence of a massive earthquake in California could make news assets more important and in higher demand by the users during this time (8:00 PM to 10:00 PM). Therefore the operation center personnel can modify the priority assigned to news assets and movies during that time (col. 7, line 52-col. 8, line 4). Thus, random number generator for generating a random time is met by device for generating random times for news between the hours 8:00 PM to 10:00 PM (randomly generated in response to the occurrence of the massive earthquake), wherein "the random time is used to modify the determined time" is met by the random time generated for news (due to the occurrence of the massive earthquake) is used to modify the time determined/scheduled/preset for downloading and displaying movies and music at time slot between 8:00 PM and 10:00 PM). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Knudson to use the teaching of using random time to modify the determined time as taught by Gordon in order at least to optimize transmission variable so that the end user gains access whenever desired (col. 2, lines 23-26) or to improve management of data transfer to meet user demands.

Hence, Knudson in view of Yuen and Gordon discloses a random number generator for generating a random time, where the random time is used to modify the determined time, as recited in claim 2.

For the reasons given above, rejections on claims 2, 12-19 are maintained as discussed in the Final Office Action mailed 7/21/2006.